

Downs then sought additional treatment for her neck and right shoulder as well as for her left carpal tunnel syndrome. Respondent argued Downs was at maximum medical improvement for her neck and right shoulder and that the left carpal tunnel syndrome was not caused by the September 15, 2005 accidental injury. After an October 1, 2007 preliminary hearing the Administrative Law Judge (ALJ) entered an Order Referring Claimant For Independent Medical Evaluation, dated October 4, 2007, referring Downs to Dr. Lynn Ketchum for an opinion whether Downs' work-related injury of September 15,

2005, caused, accelerated or aggravated her need, if any, for medical treatment to her left upper extremity.¹

Upon receipt of Dr. Ketchum's report the ALJ entered an Order for Medical Treatment dated February 21, 2008, which ordered respondent to provide medical treatment for Downs' left upper extremity and further designated Dr. Ketchum as the authorized treating physician.

The respondent requests review of whether Downs' left upper extremity injuries arose out of and in the course of her employment with respondent and whether the ALJ exceeded his jurisdiction in ordering medical treatment with the court appointed independent medical examiner.

Downs argues she met her burden of proof that her left carpal tunnel was either caused or aggravated by her work for respondent and the ALJ's Order For Medical Treatment should be affirmed. Downs further argues that because an ALJ has the authority to grant medical treatment at a preliminary hearing the ALJ did not exceed his jurisdiction appointing the independent medical examiner as claimant's treating physician. Consequently, Downs also requests the Board to dismiss that portion of respondent's appeal.

The issues raised on this appeal from the preliminary hearing are whether Downs met her burden of proof that her left carpal tunnel condition arose out of and in the course of her employment with respondent and whether the ALJ exceeded his jurisdiction by designating the court ordered independent medical examiner as the treating physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Kerry Downs suffered an injury on September 15, 2005, arising out of and in the course of her employment with respondent. She was pulling out a rack full of clothes when an employee handed her some additional items that would not fit on the rack. She lifted the clothes overhead onto the top of the rack when she heard a pop in her right shoulder. Respondent provided treatment for claimant's neck and right shoulder complaints with Drs. Sankoorikal and Smith. She continued working light duty but modified her work by using her left hand more.

¹ The ALJ also entered a separate order referring Downs to a different physician for an independent medical examination regarding her need for additional treatment for her neck and shoulder.

When Downs was released from light duty and returned to a sales associate position she would move racks of clothing. Her left hand and arm complaints started. And this was approximately December 2006 when she also complained to Dr. Sankoorikal that she was having problems with her left hand and arm. Dr. Sankoorikal recommended an EMG which was performed in February 2007. The EMG revealed minimal carpal tunnel syndrome on the left side.

Downs testified she had carpal tunnel problems in 1995 and that surgery was recommended at that time. But she declined surgery and further testified her condition improved as she did not have any problems with her left hand and arm between 1996 and 2005 when she began her employment with respondent.

Downs attributed the onset of her left hand and arm complaints to overcompensating and using her left hand and arm at work because of the injury to her neck and right shoulder. While Downs worked for respondent she also took classes to become a CNA and has been working in that capacity for Rolling Hills Health Center since August 1, 2007. She testified that her current work activities have not made her neck, right shoulder or left side complaints permanently worse although she does continue to have pain while working.

Dr. Sergio Delgado examined Downs on June 27, 2007, at the request of Down's attorney. Dr. Delgado diagnosed Downs with left carpal tunnel syndrome which he opined was caused by her work activities for respondent. As previously noted, the ALJ sent Downs for a court ordered independent medical examination with Dr. Ketchum. Dr. Ketchum agreed with Dr. Delgado that claimant's left carpal tunnel syndrome was either caused by or aggravated by her work for respondent.

Downs used her left hand and arm more at work while compensating for the injury to her right shoulder and neck.² As a result her left hand and arm became symptomatic.³ Drs. Delgado and Ketchum opined Downs' work for respondent either caused or aggravated her left carpal tunnel syndrome. Based upon the record compiled to date, this Board Member affirms the ALJ's determination that Downs' left carpal tunnel syndrome arose out of and in the course of her employment with respondent.

Respondent next argues the ALJ exceeded his jurisdiction by designating the court ordered independent medical examiner as the authorized physician to treat Downs left upper extremity.

² See *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184, rev. denied 270 Kan. 898 (2001).

³ See *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007).

The ALJ's Order in this case does not exceed the ALJ's jurisdiction. K.S.A. 44-534a provides that the ALJ at a preliminary hearing may award medical treatment at respondent's expense. The authority to order medical treatment includes the authority to require that treatment be performed by a specific provider. Although the respondent does, in the first instance, have authority to designate the authorized treating physician, when the respondent does not do so and medical care is ordered as a result of a preliminary hearing, the ALJ may either direct that the respondent choose a physician or, in the alternative, may designate the physician. This Board Member finds respondent has not raised a jurisdictional issue and this portion of the appeal is dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding of this Board Member that the Order for Medical Treatment of Administrative Law Judge Brad E. Avery dated February 21, 2008, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2008.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2007 Supp. 44-555c(k).